

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

CALVIN D. CLEVELAND, :  
Plaintiff, :  
vs. : CIVIL ACTION 07-0760-M  
MICHAEL J. ASTRUE, :  
Acting Commissioner of :  
Social Security, :  
Defendant. :

MEMORANDUM OPINION AND ORDER

In this action under 42 U.S.C. §§ 405(g) and 1383(c)(3), Plaintiff seeks judicial review of an adverse social security ruling which denied claims for child disability benefits, disability insurance benefits, and Supplemental Security Income (Docs. 1, 17). The parties filed written consent and this action has been referred to the undersigned Magistrate Judge to conduct all proceedings and order the entry of judgment in accordance with 28 U.S.C. § 636(c) and Fed.R.Civ.P. 73 (see Doc. 12).

Defendant has filed a Motion and Memorandum for Entry of Judgment Under Sentence Four of 42 U.S.C. § 405(g) with Remand of the Cause to the Defendant (Doc. 20). Defendant has stated that Plaintiff's attorney has no objection to the motion (Doc. 20, p. 1).

Defendant states that "the Commissioner believes the cause

should be remanded for further administrative proceedings. If the Court grants this motion, the Appeals Council will issue a fully favorable decision, finding the Plaintiff met Listing 12.05B on the alleged onset date of January 1, 2002" (Doc. 20, p. 1). This is a tacit admission that Plaintiff's application was not appropriately considered and that this action should be reversed. Without reviewing the substantive evidence of record, this Court accepts Defendant's acknowledgment of error.

It appears to the Court that the decision of the Secretary should be reversed and remanded. Such remand comes under sentence four of 42 U.S.C. § 405(g). *See Melkonyan v. Sullivan*, 501 U.S. 89 (1991). For further procedures not inconsistent with this report, see *Shalala v. Schaefer*, 509 U.S. 292 (1993).

Therefore, it is **ORDERED**, without objection from Plaintiff, that Defendant's Motion to Remand under sentence four be **GRANTED** (Doc. 20) and that this action be **REVERSED** and **REMANDED** to the Social Security Administration for further administrative proceedings not inconsistent with the orders of this Court. Judgment will be entered by separate order.

DONE this 29<sup>th</sup> day of April, 2008.

S/BERT W. MILLING, JR.  
UNITED STATES MAGISTRATE JUDGE